

legal rights to enforce his interest survive the levy procedure. For example, the levy may be wrongful against such a person if the property is an obligation which is collected pursuant to the levy rather than sold and nothing thereafter remains for the senior lienholder, or the property levied upon is of such a nature that when it is sold at a public sale the property subject to the senior lien is not available for the senior lienholder as a realistic source for the enforcement of his interest. Some of the factors which should be taken into account in determining whether property remains or will remain a realistic source from which the senior lienholder may realize collection are: (1) The nature of the property, (2) the number of purchasers, (3) the value of each unit sold or to be sold, (4) whether, as a direct result of the distraint sale, the costs of realizing collection from the security have or will be so substantially increased as to render the security substantially valueless as a source of collection, and (5) whether the property subject to the distraint sale constitutes substantially all of the property available as security for the payment of the indebtedness to the senior lienholder.

(2) *Example.* The provisions of subparagraph (1) of this paragraph (b) may be illustrated by the following example:

*Example.* On April 10, 1972, A makes a \$10,000 loan to B which is partially secured by a \$5,000 obligation owed to B by C. Under local law, A's security interest in the obligation owed to B by C is protected against a subsequent judgment lien arising out of an unsecured obligation. Thus, under section 6323(h)(1), A's security interest exists as of April 10, 1972, for purposes of determining priorities against a tax lien under section 6323. On April 17, 1972, an assessment of \$6,000 is made against B with respect to his delinquent Federal tax liability. Thereafter, notice of lien is filed pursuant to section 6323(f) with respect to B's delinquent tax liability. On July 10, 1972, a notice of levy is served upon C to reach the amount owed by him to B. C pays over the \$5,000 obligation in satisfaction of the levy and, under local law, the obligation is discharged as to A. Because the levy effectively destroyed A's senior security interest in the obligation owed to B by C, the levy is wrongful as to A for purposes of section 7426. Under these circumstances, the levy is wrongful with respect to A even if, under local law, A may have a cause of ac-

tion in contract against B for the \$10,000 loan or may have a cause of action in tort against C for the amount of the \$5,000 payment which defeated A's security interest in the obligation owed by C to B.

(3) *Surplus proceeds.* If the court determines that the interest or lien of any party to an action under section 7426 was transferred to the proceeds of a sale of the property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale. The term "surplus proceeds" means those proceeds realized on a sale of property remaining after application of the provisions of section 6342(a).

(4) *Substituted sale proceeds.* If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

(c) *Effective date.* Paragraph (a)(1) of this section is effective as of December 23, 1993.

[T.D. 7305, 39 FR 9951, Mar. 15, 1974, as amended by T.D. 8541, 59 FR 26601, May 23, 1994]

#### **§ 301.7429-1 Review of jeopardy and termination assessment and jeopardy levy procedures; information to taxpayer.**

Not later than 5 days after the day on which an assessment is made under section 6851(a), 6852(a), 6861(a), or 6862, or a levy is made under section 6331(a) without complying with the notice before levy provisions of section 6331(d), the district director shall provide the taxpayer a written statement setting forth the information upon which the district director relies in authorizing such assessment or levy.

[T.D. 8453, 57 FR 58985, Dec. 14, 1992]

#### **§ 301.7429-2 Review of jeopardy and termination assessment and jeopardy levy procedures.**

(a) *Request for administrative review.* Any request for the review of a jeopardy or termination assessment or jeopardy levy provided for by section 7429(a)(2) shall be filed with the district director within 30 days after the statement described in § 301.7429-1 is given